

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

NELSON SUMPTER,

Petitioner,

Case Number: 19-CV-11356
HONORABLE GERSHWIN A. DRAIN

v.

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Respondent.

_____/

**ORDER TRANSFERRING CASE TO
THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Petitioner Nelson Sumpter, a Michigan state prisoner, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the reasons set forth below, the Court determines that this is a successive habeas corpus petition and orders it transferred to the United States Court of Appeals for the Sixth Circuit, pursuant to 28 U.S.C. § 1631¹ and 28 U.S.C. § 2244(b)(3)(A).

¹ 28 U.S.C. § 1631 provides, in relevant part:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed . . .

On November 12, 2008, following a bench trial in Wayne County Circuit Court, Petitioner was convicted of forty-one counts in four separate cases consolidated for trial. In 2011, Sumpter filed a habeas corpus petition in this Court challenging the same convictions challenged in this petition. On November 20, 2012, the Court issued an Order denying Sumpter relief. *Sumpter v. Berghuis*, No. 11-cv-13385, 2012 WL 5875021 (E.D. Mich. Nov. 20, 2012).

Before a prisoner may file a habeas petition challenging a conviction already challenged in a prior habeas petition which was denied on the merits, the prisoner must “move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Nelson’s prior habeas petition was denied on the merits, and he has not obtained from the Court of Appeals for the Sixth Circuit authorization to file a successive petition. When a second or successive petition for habeas corpus relief is filed in the district court without prior authorization, the district court must transfer the petition to the Court of Appeals. *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

Accordingly, the Court **ORDERS** the District Court Clerk to transfer this case to the United States Court of Appeals for the Sixth Circuit.

SO ORDERED.

Dated: August 29, 2019

s/Gershwin A. Drain
HON. GERSHWIN A. DRAIN
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, August 29, 2019, by electronic and/or ordinary mail.

s/Teresa McGovern
Case Manager